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**Courtyard Manor of Livonia and Local 79, Service Employees International Union, AFL-CIO.**  
Cases 7-CA-46860, 7-CA-46907, and 7-CA-47054

April 21, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND  
MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and an amended charge filed by the Union between November 18, 2003, and January 15, 2004, the General Counsel issued the consolidated complaint on February 12, 2004, against Courtyard Manor of Livonia, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On March 19, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On March 23, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by February 26, 2004, all the allegations therein would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 27, 2004, notified the Respondent that unless an answer was received by March 11, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,<sup>1</sup> we grant the General Counsel's Motion for Default Judgment.

<sup>1</sup> Copies of the consolidated complaint and the February 27 letter were sent to the Respondent by both certified and regular mail. The copy of the consolidated complaint sent by certified mail was returned marked "unclaimed." The copies of the consolidated complaint and

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and facility in Livonia, Michigan, has been engaged in the operation of an assisted living facility for the elderly, specializing in residents suffering from Alzheimer's disease and dementia.

During the 12-month period preceding the filing of the charge in Case 7-CA-46860, a representative period, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its Livonia facility natural gas valued in excess of \$10,000 from CMS Energy Corp., 80 percent of which was received by CMS Energy Corp. directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 79, Service Employees International Union, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, unless otherwise indicated, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Rubin Chandok—Executive Director until January 2004; part owner  
Julie Jones—Executive Director since January 2004  
Sharon Clontz—Director of Operations until November 21, 2003  
Julie Bell—Human Resource/Payroll Manager  
Iyonna Hughley—Day-Shift Supervisor-direct care

On about the dates set forth opposite their names, the Respondent suspended for 60 days the following employees:

Angela Thomas—November 17, 2003  
Teresa Benton—November 18, 2003  
Tanissa May—November 25, 2003

February 27 letter sent by regular mail were not returned. It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there. Further, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. *Id.*

On about January 14, 2004, the Respondent terminated the employment of Angela Thomas, Teresa Benton, and Tanissa May.

The Respondent engaged in the conduct described above because the named employees joined and assisted the Union and to discourage employees from engaging in these and other protected concerted activities.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by suspending and terminating employees Angela Thomas, Teresa Benton, and Tanissa May, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful suspensions and terminations, and to notify Angela Thomas, Teresa Benton, and Tanissa May in writing that this has been done and that the suspensions and terminations will not be used against them in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Courtyard Manor of Livonia, Livonia, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending, terminating, or otherwise discriminating against employees because they join and assist Local 79, Service Employees International Union, AFL-CIO, or any other labor organization, and to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Angela Thomas, Teresa Benton, and Tanissa May full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make whole Angela Thomas, Teresa Benton, and Tanissa May for any loss of earnings and other benefits suffered as a result of their unlawful suspensions and terminations, with interest, in the manner set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful suspensions and terminations of Angela Thomas, Teresa Benton, and Tanissa May, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful suspensions and terminations will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Livonia, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall du-

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

plicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 17, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 21, 2004

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Robert J. Battista, Chairman

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Dennis P. Walsh, Member

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Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO  
Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit or protection

Choose not to engage in any of these protected activities.

WE WILL NOT suspend, terminate, or otherwise discriminate against employees because they join or assist Local 79, Service Employees International Union, AFL-CIO, or any other labor organization, and to discourage employees from engaging in these and other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Angela Thomas, Teresa Benton, and Tanissa May full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make whole Angela Thomas, Teresa Benton, and Tanissa May for any loss of earnings and other benefits suffered as a result of their unlawful suspensions and terminations, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful suspensions and terminations of Angela Thomas, Teresa Benton, and Tanissa May, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful suspensions and terminations will not be used against them in any way.

COURTYARD MANOR OF LIVONIA